

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

March 28, 2013

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 12-60711

Summary Calendar  
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ULYSSES BOWNES,

Plaintiff-Appellant

v.

JIM HOOD, Mississippi Attorney General; RALPH DOXEY, Former Assistant District Attorney; RAYMOND BYRD, Warden, C.C.A. Wilkinson County Correctional Facility; EMMITT L. SPARKMAN, Deputy Commissioner of Corrections; CHRISTOPHER B. EPPS, Commissioner of Corrections; PHIL BRYANT, Governor of Mississippi; ERIC H. HOLDER, JR., U. S. Attorney General,

Defendants-Appellees

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Appeals from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:12-CV-399  
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Before HIGGINBOTHAM, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Ulysses Bownes, Mississippi prisoner # L0115, appeals the dismissal of his in forma pauperis (IFP), pro se complaint, which raised claims pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2254. The district court dismissed Bownes's

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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§ 1983 claim as frivolous and for failure to state a claim and imposed a 28 U.S.C. § 1915(g) strike for the dismissal. The district court dismissed Bownes's § 2254 claim without prejudice. *See Serio v. Members of La. St. Bd. of Pardons*, 821 F.2d 1112, 1119 (5th Cir. 1987); *Preiser v. Rodriguez*, 411 U.S. 475, 494, 499-500 (1973).

As an initial matter, Bownes's motions to file supplemental authorities are granted. His motion for appointment of counsel is denied.

Although the district court did not rule upon whether a certificate of appealability was warranted, *see* 28 U.S.C. § 2253(c)(1)(A), we will not reach this jurisdictional issue due to the frivolous nature of Bownes's appeal. *Cf. United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000). Bownes has abandoned by failing to challenge the district court's dismissal of his § 1983 claims and the denial of habeas relief. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993).

Bownes's appeal is without arguable merit and thus is frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. *See* 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a strike under § 1915(g), as does the district court's dismissal of the complaint. *See* § 1915(g); *Patton v. Jefferson Correctional Center*, 136 F.3d 458, 463-64 (5th Cir. 1998); *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Bownes is warned that if he accumulates three strikes, he may not proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

MOTION TO FILE SUPPLEMENTAL AUTHORITIES GRANTED;  
MOTION FOR APPOINTMENT OF COUNSEL DENIED; APPEAL  
DISMISSED; SANCTION WARNING ISSUED.